

Edward H. "Ted" Pitts, Jr.

District No. 69 - Lexington County  
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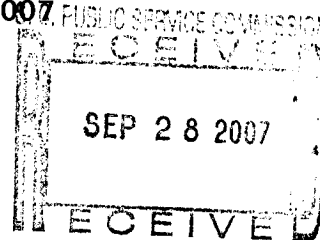
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**Committee:**

Education and  
Public Works

## South Carolina House of Representatives

September 26, 2007



Mr. Charlie Terreni, Chief Clerk  
Public Service Commission  
101 Executive Drive, Suite 100  
Columbia, South Carolina 29210

Dear Mr. Terreni:

I am writing because I have some major concerns with the request to service the Kingston Plantation development on Lake Murray in Lexington County that Carolina Water Service has submitted to the Public Service Commission.

Carolina Water Service is asking the Public Service Commission to grant them the rate approval and the ability to service Kingston Harbor Subdivision, which is a residential neighborhood planned off Catawba Trail on Lake Murray. My concerns come from the fact that the Town of Lexington, in my opinion, should be servicing this subdivision.

My opposition to CWS's application is not an effort to try to roadblock the project. I support the developer's right to develop his land, and if the only way sewer service could be provided to the project is by CWS I would not be objecting to the proposal. The facts are that the future consumers and residents of Kingston Plantation will be subjected to higher rates because of the agreement entered into between CWS and the Town of Lexington. I would submit to you that the Town of Lexington, not CWS, has the capacity and under the Contract is actually selling the capacity to Carolina Water Service. The collection point and line that the development is tying into is a Town of Lexington sewer line located 300 yards from the development. Lastly, if you look at the 208 Regional Water and Sewer Plan that is managed by the Central Midlands Council of Governments delineating service areas, you will see that the Kingston Harbor Subdivision is located primarily in the Town of Lexington service area. A rough guess is that 90% of the subdivision lies in the Town of Lexington service area and 10% lies in CWS's area.

In view of all three of these facts, it seems logical that the Town of Lexington should service this subdivision and Carolina Water Service's request should be denied. In fact, the Contract between CWS and the Town of Lexington says if the Public Service Commission denies CWS's request, the Town of Lexington will service Kingston Harbor Subdivision.

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I have had several people point out that no one has objected to the request through public notification, but I will point out that it is very unlikely that anyone would have objected because these rates will be levied on residents of Kingston Plantation, a subdivision that does not yet exist.

I would appreciate notification of the time and place of your October 3 Public Service Commission Hearing and would request an opportunity to speak to the Commission on this issue.

I look forward to hearing from you. You can contact me on my cell phone at 606-3658.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ted', with a stylized flourish at the end.

Ted Pitts

TP/dks/2007sept25-1,2

cc: The Honorable Ronnie Cromer, P. O. Box 378, Prosperity, SC 29127  
The Honorable Smokey Davis, 212 South Lake Drive, Lexington, SC 29072  
The Honorable Billy Derrick, 212 South Lake Drive, Lexington, SC 29072  
Mr. Jim Duckett, City Administrator, Town of Lexington, 111 Maiden Lane, Lexington, SC 29072  
The Honorable Randy Halfacre, Mayor, Town of Lexington, 111 Maiden Lane, Lexington, SC 29072  
Mr. John Hoeffler, P. O. Box 8416, Columbia, SC 29202-8416  
Mr. C. Dukes Scott, Executive Director, Office of Regulatory Staff, P. O. Box 11263, Columbia, SC 29211

STATE OF SOUTH CAROLINA )

COUNTY OF LEXINGTON )

BULK SEWAGE TREATMENT  
AND SERVICE AREA AGREEMENT

This Agreement, made and entered into this 18<sup>th</sup> day of July

2007, by and between Carolina Water Service, Inc., a Delaware corporation authorized to do business in the State of South Carolina, ("CWS" or "Utility") and the Town of Lexington, a political subdivision of the State of South Carolina and a body corporate and politic, ("Town").

WITNESSETH

WHEREAS, Town operates and maintains a sewage collection, transportation and treatment system located both within and without its corporate limits in the State and County aforesaid; and

WHEREAS, Utility operates and maintains a sewage collection, transportation and treatment system known as the Watergate System serving various subdivisions outside the corporate limits of the Town in the State and County aforesaid; and,

WHEREAS, Town is the Designated Management Agency for wastewater management for a certain area of Lexington County within and without the Town's corporate limits under the provisions of the "208 Water Quality Management Plan" adopted March 25, 2004 ("208 Plan") promulgated by the Central Midlands Council of Governments ("Town Management Area"), as shown on Exhibit 1 attached hereto and incorporated herein by this reference; and

WHEREAS, under the 208 Plan a portion of the Town Management Area is to be served by CWS as also shown on Exhibit 1 ("CWS Area"); and

COPY

WHEREAS, certain real property proposed to be developed as the Catawba Trail Subdivision is partially situated within the Town Management Area and partially within the CWS Area, also as shown on Exhibit 1 ("Subdivision"); and

WHEREAS, the developer of the Subdivision has requested that CWS provide service to the Subdivision, including the portion of same that is not within the CWS Area, also as shown on Exhibit 1; and

WHEREAS, CWS desires and is willing to provide sewer service to the Subdivision and to the other portions of the Town Management Area not currently within the CWS Area, as shown on Exhibit 1; and

WHEREAS, the Watergate System does not have sufficient treatment capacity for CWS to treat the additional wastewater flow which would be generated in the Subdivision and in other parts of the Town Management Area not within the CWS Area and CWS will therefore require bulk sewage treatment service for that purpose; and

WHEREAS, the Town is capable of providing bulk sewer treatment service to CWS for the purposes described hereinabove; and

WHEREAS, the Town is willing to charge CWS for bulk sewage treatment service in a manner equal to and uniform with the manner it charges other bulk service customers of the Town; and

WHEREAS, in the event that CWS is unable to obtain the necessary governmental approvals to provide service in the areas contemplated herein, the Town would be willing to acquire from CWS the right to serve the Subdivision under certain terms and conditions as set forth below.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants set forth hereinafter, CWS and the Town agree as follows:

Section I.

Terms and Conditions of Service

1. Town agrees to provide bulk sewage treatment service to CWS for wastewater flow generated in the Subdivision and in the other portions of the Town Management Area not now within the CWS Area ("Bulk Service Area") as is shown on Exhibit 2 attached hereto and incorporated herein by reference. The initial charge for this bulk sewage treatment service shall be \$3.45 per thousand gallons of sewage as metered by the Town through a single, mutually acceptable master meter to be purchased and installed by or on behalf of CWS and at no expense to the Town at a mutually acceptable location. This master meter shall, at all times, be subject to applicable standards for operation, maintenance, and accuracy. This rate is the most favorable bulk rate provided by the Town to its other existing bulk customer, Saluda County. This rate shall be available for a period of one (1) full year from the date of interconnection of the CWS collection and transportation facilities with the Town's transportation facilities, but is subject to change by the Town thereafter pursuant to such procedures as may be binding upon it. Notwithstanding anything contained herein to the contrary, CWS shall not be charged a rate in excess of the lowest rate made available by the Town to any other bulk sewer customer. The Town shall be entitled to provide its bulk service to CWS utilizing wastewater treatment facilities owned by the Town or utilizing bulk treatment services of third party providers. The Town represents and warrants that it is currently capable of providing bulk treatment service to CWS for the Subdivision. It is acknowledged and understood, however, that the availability of

bulk treatment service for other parts of the Bulk Service Area is dependent upon the Town's existing, or ability to acquire additional, bulk treatment capacity.

2. The charge provided for in Section I.1, shall be paid by CWS to Town monthly, based upon a monthly sewage master meter reading taken by Town. Payment shall be due within thirty (30) days following written notification by Town to CWS regarding its monthly determination of sewage flow through the master meter.

3. CWS shall, at its expense, transport sewage from the Bulk Service Area to the master meter to the Town for further transportation and for treatment.

4. CWS shall, at its expense, maintain such collection lines, pumping stations, transportation lines or mains, and any and all other facilities required to transport the sewage from the Bulk Service Area to the master meter in accordance with the rules and regulations of the South Carolina Department of Health and Environmental Control and all other governmental agencies having jurisdiction over such collection and transportation.

5. The Town will maintain and operate the master meter and its transportation system and will provide sewage treatment in accordance with the rules and regulations of the South Carolina Department of Health and Environmental Control and all other governmental agencies having jurisdiction over such transportation and treatment.

6. As detailed plans are submitted to CWS by developers for sewage facilities proposed to be constructed for sewage service in the Bulk Service Area, CWS shall forward a copy of these drawings for the Town's review and approval. This approval will not be unduly withheld and the Town will complete this review process within 30 days of submission of the required documentation by CWS.

7. The Town shall monthly submit to CWS, and at such other times as the Town and CWS shall agree, reports showing the volume of sewage flow, measured in gallons, as recorded by the master meter as provided in Section I.1 above. CWS shall have the right of access at all reasonable times to observe, examine, and inspect the master meter. CWS shall also have the right to inspect at reasonable times, all books, records, and other information related to bulk sewage flow received by the Town and bulk sewage service charges imposed by the Town therefor.

8. CWS shall construct, or cause to be constructed, at no cost to the Town, the interconnection of CWS's facilities in the Bulk Service Area to the Town's master meter. This connection shall be subject to supervision, inspection and approval by the Town. The Town agrees that there will be no 'tap fees' or similar charges due from CWS to the Town at the time of interconnection, but that CWS shall collect and pay to the Town any tap fees due the Town from customers in the Bulk Service Area at such time as they establish service with and from CWS.

9. The CWS collection and transportation system serving the Bulk Service Area shall at all times be maintained, operated, and kept in a state of repair which shall meet all rules and regulations of the South Carolina Department of Health and Environmental Control and all other governmental entities having jurisdiction over it.

10. CWS shall be solely responsible for collecting all charges or fees attributable to service within the Bulk Service Area. Its failure to collect any service charges or fees shall not relieve CWS from paying to the Town the monthly charges set forth in this Agreement.

## Section II.

### Rates and South Carolina Public Service Commission Approval

1. The parties acknowledge that CWS will charge its customers for service under CWS's rate schedule approved by the South Carolina Public Service Commission ("SCPSC") and in effect from time to time, including provisions authorizing CWS to pass-through to its customers on a pro rata basis without markup the costs to CWS of receiving the Town's bulk sewage service, including the per gallon charge and any tap or similar fees imposed by the Town and described above. The parties further acknowledge that the terms and conditions of this Agreement must be approved by the SCPSC, including but not limited to, approval of service by CWS in the Bulk Service Area.

2. The Town agrees to actively participate and cooperate with CWS to secure SCPSC approval of the within Agreement.

3. It is understood by the parties that if SCPSC refuses to grant the necessary approvals for CWS to provide service in the Bulk Service Area in accordance with the terms and conditions hereof, then CWS shall have no obligation to accept, and the Town no obligation to provide, bulk sewage service in the Bulk Service Area. In that event, the Town may then proceed with acquiring the right to provide retail sewage service in the Subdivision in accordance with the terms and conditions of Section IV hereinbelow.

4. Notwithstanding anything contained herein, this Agreement shall not constitute an agreement or offer on the part of CWS to provide sewage service. The parties acknowledge and agree that the provision of sewer service by CWS shall be subject to separate agreement between



CWS and any person or entity desiring service in the Bulk Service Area, including any property owner, real estate developer, contractor or potential customer.

### Section III.

#### General Provisions

1. In the event CWS disputes the accuracy of any master meter reading, it must notify the Town within thirty (30) days of receipt of a billing by the Town. Upon receipt of such notification by CWS, the Town will promptly undertake to ascertain, through appropriate calibration testing, whether the master meter is functioning properly in accordance with manufacturer standards and specifications. All master meter readings not disputed within thirty (30) days of CWS's receipt of a billing by the Town are final and not subject to any dispute. In the event CWS timely disputes a billing by the Town, it shall pay to the Town the disputed amount billed unless other mutually agreeable arrangements are made between the parties. If it is determined that the billing is in error, then CWS will be reimbursed by the Town for any difference within thirty (30) days of such a determination. If it is determined that the Town's master meter is not working properly, the Town will be responsible for any repair or replacement costs. In the event of any unresolved dispute concerning the master meter performance, the parties agree to select a mutually acceptable independent testing company qualified to perform appropriate tests on the master meter. The decision of this mutually-selected testing company the master meter performance shall be final and binding upon the parties. If the master meter is determined to be accurate within tolerance ranges acceptable within the utility industry or to utility regulators, then CWS will pay the testing costs. If the master meter is determined to be inaccurate or outside the tolerance ranges, then the Town shall pay for the testing costs.

2. Any notice to be given to any party shall be by certified mail to the addresses shown below. These addresses may be changed by either party giving proper written notice to the other:

Town:  
Town of Lexington  
Post Office Box 397  
Lexington, South Carolina 29071  
Attn: T. Randall Halfacre, Mayor

CWS:  
Carolina Water Service, Inc.  
Attn: Ms. Lisa Crossett  
Vice President and Chief Operating Officer  
2335 Sanders Road  
Northbrook, IL 60062

with a copy to:  
Mr. Bruce T. Haas  
Regional Director  
Carolina Water Service, Inc.  
P.O. Box 4509  
West Columbia, SC 29171-4509

Delivery when made by registered or certified mail shall be deemed complete upon mailing.

Delivery by overnight courier shall be deemed complete when delivered.

3. This Agreement is effective for twenty (20) years commencing on the date upon which bulk sewage commences flowing through the master meter.

4. This Agreement may be assigned by either party upon written notice to the other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

5. If either party materially fails or defaults in keeping, performing, or abiding by these Agreement terms and provisions, then the non-defaulting party shall give written notice to the defaulting party specifying the nature of the default. If the defaulting party does not cure the

default within thirty (30) days after the date of written notice, then this Agreement, at the option of the non-defaulting party, shall terminate. Neither party shall be relieved of liability to the other for damages sustained by virtue of any party wrongfully exercising this provision. This paragraph is not intended to replace any other legal or equitable remedies available to any non-defaulting party under South Carolina law, but it is in addition thereto.

6. Except as provided in this Agreement, neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, if such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy, interference by civil authorities, acts or failure to act, decisions or orders or regulations of any governmental or military body or agency, office or commission, delays in receipt of materials, or any other cause, whether of similar or dissimilar nature, not within the control of the party affected and which, by the exercise of due diligence, such party is unable to prevent or overcome, except as otherwise provided for herein. Should any of the foregoing events occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement.

7. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.

8. This Agreement sets forth the complete understanding between CWS and the Town and no prior agreements or communications, whether oral or written, shall be deemed a part hereof. Any amendments hereto to be effective must be made in writing and signed by the

parties hereto.

9. This Agreement shall be governed by the laws of the State of South Carolina.

10. If this Agreement is not executed prior to August 15, 2007, then the terms and conditions contained herein will be waived; with no further obligations or responsibilities to either party.

#### Section IV

##### Acquisition of CWS Taps Within the Subdivision

1. Should the SCPSC fail to grant the approvals required under Section II hereinabove, the Town shall become entitled to serve customers in the Subdivision upon satisfaction of the remaining terms and conditions of this Section IV.

2. The Town shall pay to CWS the sum of One Thousand Seven Hundred Fifty and no/100ths (\$1,750.00) Dollars for each person or entity who becomes a customer of the Town in the Subdivision. This figure represents one-half (1/2) of the Capital Contribution Fee ("CCF") that the Town currently imposes upon new sewer customers connecting to the Town's sewer system. Should the Town increase its CCF, the amount due to CWS hereunder shall increase proportionately.

3. The Town shall pay the foregoing sum to CWS as and when it receives a CCF for sewage service to a person or entity in the Subdivision.

[Signatures to begin on the following page.]

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed and have been duly authorized by their respective governing bodies on the date above first written.

Town of Lexington

James W. Duckett, Jr.  
By: James W. Duckett, Jr.  
Its: Administrator

Witness/Attest:

1) Bruce J. Hase  
2) Anthony J. Hase

Carolina Water Service, Inc.

Carl Daniel  
By: Carl Daniel  
Its: Vice President

Witness/Attest:

1) Bruce J. Hase  
2) Anthony J. Hase



**EXHIBIT 2**

**BULK SERVICE AREA**

**FOR**

**WATER TREATMENT PLANT TO TOWN OF LEVINGTON**

